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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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11 SCHNEIDER RUCINSKI ENTERPRISES, a) Case No. 3:08-cv-00138-WQH-POR
12 California Company,
13 Plaintiff,
14 vs.
15 TOUCH ASIA OUTSOURCING) Date: March 24, 2008
16 SOLUTIONS, INC. dba TOUCH ASIA) Time: 11:00 a.m.
17 CALL CENTER, INC., a California)
18 Corporation; RUDY NGAW, an individual;) Judge: Hon. William Q. Hayes
19 STRATASOFT, INC.; INX, INC., a Texas)
Corporation formerly known as I-SECTOR)
CORPORATION; and DOES 1 through 20,)
inclusive,)
Defendants.)
Case No. 3:08-cv-00138-WQH-POR
Date: March 24, 2008
Time: 11:00 a.m.
Judge: Hon. William Q. Hayes
DEFENDANT INX, INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS
[NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT]
Complaint Filed: January 23, 2008

I. INTRODUCTION

22 Defendant INX, Inc. hereby submits this Reply Memorandum in reply to Plaintiff
23 Noreen Rucinski's Opposition to INX's motion to dismiss. Plaintiff miscomprehends the law
24 and arguments in the motion to dismiss and therefore fails to effectively address the issues
25 raised in the motion. Accordingly, the Court should dismiss the complaint on the basis and
26 arguments stated in the motion.

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II. PLAINTIFF UTTERLY FAILS TO ADDRESS THE COURT'S LACK OF SUBJECT MATTER JURISDICTION

Understandably, Plaintiff's appearance in this case pro se might explain her failure to fully grasp that the Court lacks subject matter jurisdiction of this action because there are non-diverse parties on both sides of the case. However, even a party who appears in her own stead and chooses to represent herself must be bound by the requirements of law even if she does not fully comprehend them. In that respect, Fed. R. Civ. Pro 11 states, in relevant part:

“By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – an attorney *or unrepresented party* certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

* * *

(2) the claims, defenses, and other legal contentions' are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;"

(Emphasis added.)

18 Plaintiff has completely failed to articulate why the Court has subject matter jurisdiction when
19 her complaint alleges on its face that there are non-diverse parties on both sides. She likely is
20 in violation of the standards set forth in Rule 11.

With respect to Plaintiff’s purported support for the basis of the Court’s subject matter jurisdiction in this case, Plaintiff focuses solely on the amount in dispute and the alleged, but irrelevant, fact that “INX is a corporation located and doing business in Texas, [and Plaintiff’s company] is a company doing business in California.” (See Opposition at 5.) Plaintiff fails completely to address the requirements of complete diversity of the parties, a circumstance necessary in order to vest this Court with diversity jurisdiction. However, and as fully developed in moving party’s initial filing, Plaintiff freely acknowledges in her complaint that “Schneider Rucinski Enterprises” is a business entity organized and residing in San Diego.

1 California. She further pleads that both Defendants Rudy Ngaw and Touch Asia Outsourcing
 2 Solutions, Inc. reside in California. Accordingly, the Defendant INX's motion essentially
 3 stands unopposed on this basis and the Court should grant it.

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5 **III. PLAINTIFF ALSO FAILS TO RESPOND TO ANY OF THE ARGUMENTS**
 6 **UPON WHICH DEFENDANT INX'S RULE 12(B)(6) MOTION IS BASED**

7 Plaintiff dances a not so delicate jig around the grounds that Defendant INX presented
 8 for the alternative dismissal of Plaintiff's complaint under Rule 12(b)(6). While Plaintiff
 9 accurately states that the Court must construe the allegations of the complaint in the light most
 10 favorably to her and presume those allegations to be true (Opposition at 5), the fact of the
 11 matter is that she has not alleged *sufficient* facts to substantively state the claims she purports
 12 to state. Her Opposition does not in any way show why the facts she has alleged in the
 13 complaint are actionable conduct on the part of INX. Even if the Court presumes her
 14 allegations to be factually true, for the reasons stated in INX's motion, those allegations fail to
 15 demonstrate that INX engaged in any actionable conduct. The Court is not required to re-write
 16 Plaintiff's pleading for her.

17 Furthermore, Plaintiff also ignores the fact that her allegations of fraud are not governed
 18 by the "short and plain statement" standards of Rule 8, but by the enhanced pleading
 19 requirements contained in Rule 9. Plaintiff's Opposition also completely fails to address the
 20 specificity requirements for fraud actions, and fails to justify why the fraud allegations in her
 21 complaint should not be discounted. Accordingly, the Court has no choice but to dismiss the
 22 complaint.

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1 **IV. CONCLUSION**

2 For the reasons stated in Defendant INX's motion and accompanying memorandum, this Court
3 should dismiss the complaint.

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5 Dated: March 17, 2008

Respectfully submitted

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10 **WALLER LANSDEN DORTCH & DAVIS, LLP**

11
12 By: _____ /s/

13 John E. McOske
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15 Stratasoft, Inc. and INX, Inc.
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